

POLICE/SHERIFF'S DEPARTMENT		GENERAL ORDERS	
SUBJECT: Search Warrants		NUMBER: 2-2	
EFFECTIVE DATE: July 1, 1999		REVIEW DATE:	
AMENDS/SUPERSEDES: GO 2-2, January 1988		APPROVED: _____ Chief of Police/Sheriff	
CALEA STANDARDS: 74.1, 74.3		VLEPSC STANDARDS: ADM.02.02-.03, OPR.02.06	

NOTE

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

Affidavit
 Curtilage
 Eyewitnesses
 Force; use of in executing warrants
 Informants
 Search warrants
 Seizure

I. POLICY

The Fourth Amendment to the U.S. Constitution guarantees every citizen the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Supreme Court decisions regarding search and seizure place the responsibility on the police to ensure that citizens' Fourth Amendment rights are protected. Officers shall scrupulously observe constitutional guidelines when conducting searches and always remain mindful of their lawful purpose. Search warrants, in particular, are one of the most valuable and powerful tools available to law-enforcement officers. Because of the potential harm to citizens, the risks to officers' safety, and to the department image in the community, officers shall have a thorough knowledge of the legal requirements in obtaining search warrants.

II. PURPOSE

The purpose of this general order is to establish guidelines and procedures which police officers must follow when conducting searches and seizures.

III. DEFINITIONS

A. Search warrant

A written order, signed by a judicial authority, directing a police officer to search for specified personal (or business) property and bring it before the judicial officer.

B. Curtilage

Curtilage usually refers to the yard, garden, or piece of ground which adjoins a private residence. While the term has no absolute definition that applies under all circumstances, the curtilage of a private residence, for instance, is determined by whether the area is enclosed; the nature and use of the area; the proximity of the area to the home; and any measures taken by the owner to protect the area from observation.

IV. PROCEDURES - General

A. Legal authorities

1. *Virginia Code* § 19.2-52 states that a judge or magistrate may issue a search warrant if the following circumstances exist:
 - a. There is a reasonable and probable cause to do so.
 - b. There is a complaint on oath supported by an affidavit.
2. § 19.2-53 states that search warrants may be issued for the search of or for specified places, things or persons, and seizure therefrom of the following things as specified in the warrant:
 - a. Weapons or other objects used in the commission of a crime.
 - b. Articles or things the sale or possession of which is unlawful.
 - c. Stolen property or the fruits of any crime.
 - d. Any object, thing, or person including documents, books, records, paper, or body fluids constituting evidence of a crime.

B. Supreme Court decisions

The Supreme Court of the United States issues decisions which must be used as guidelines in conducting searches. Because the Fourth Amendment to the Constitution prohibits unreasonable searches and seizures, officers bear the burden of proving that the search was reasonable. The court will examine reasonableness according to the answers to these questions:

1. Was there probable cause to issue the search warrant?
2. Was the scope of the search appropriate?

C. Exceptions to search warrant requirements

See GO 2-1 for a discussion of exceptions to search warrant requirements.

V. PROCEDURES - Obtaining a search warrant

A. Essential legal requirements

1. To obtain a search warrant, an officer must show probable cause to believe that specific evidence, contraband, or fruits of a crime may be found at a particular place.
2. The officer shall carefully document specific facts that constitute probable cause. Two kinds of facts must be considered:
 - a. The **facts** from which the officer concluded that the person or thing is probably located at the place to be searched.
 - b. The **facts** which address the reliability of the source of the officer's information.
3. The court considers only those facts presented in the warrant and affidavit.
4. Conclusions and suspicions are not facts.
5. Facts must be recent.
6. Apart from the officer's personal knowledge or observations, facts may derive from a reliable informant. See GO 2-11, Informants.
7. Reliability of facts is established by:
 - a. Personal observation or knowledge by an officer.
 - b. Eyewitnesses who have first-hand knowledge.

- c. Informants (see GO 2-11).

B. Where to obtain a search warrant

1. A search warrant may be obtained from any of the following three sources, according to § 19.2-52:
 - a. Any judge.
 - b. Any magistrate.
 - c. Any other person having the authority to issue criminal warrants.

C. Affidavits

1. The accuracy of the affidavit is vital to the validity of the search warrant. On the designated form, officers shall provide the information listed below. § 19.2-54 requires officers to swear to the facts of the affidavit before a judge or magistrate. Note that the search warrant must be obtained in the jurisdiction where the place or person to be searched is located.
2. The affidavit shall include the following elements:
 - a. A detailed description of the place, thing, or person to be searched, including map coordinates or distances from given reference points, if necessary.
 - b. A description of the things or persons to be searched for.
 - c. A substantial allegation of the offense in relation to which the search is to be made.
 - d. An allegation that the object, thing, or person to be searched constitutes evidence of the commission of the offense.
 - e. Material facts which would show that there is probable cause for issuing the search warrant.

D. Language of the warrant

Only the things specified in the search warrant can be seized (for a discussion of exceptions to this, such as plain-view seizures and searches incident to arrest, see GO 2-1 and GO 2-4). The warrant shall specify the following.

1. The areas to be searched shall be precisely stated. If officers wish to search a home and its surroundings, the affidavit must specify a "premises" search and its curtilage and must identify outbuildings, garages, as appropriate.
2. If motor vehicles to be searched are on the premises, the warrant shall so specify.
3. If searches of specific persons (other than frisks) are to be included during the search, the warrant shall so specify. If the warrant states that all persons present shall be searched, then probable cause to do so must be justified in the affidavit.
4. The items to be searched for shall be precisely described. If an item to be searched for may be dismantled (e.g., firearms), then the warrant must specify the search for parts, pieces, or components of the item.
5. If officers anticipate searching for and seizing computers or similar, complex technology, then experts must be consulted to determine the appropriate language to list in the affidavit and for outlining appropriate guidelines in the warrant for seizure of hardware and software.

VI. PROCEDURES - Executing a search warrant

A. When a search warrant must be executed

1. An officer is required by § 19.2-56 to execute a warrant within 15 days of the date it was issued. If it has not been executed during that time, the officer shall void the warrant and return it to the magistrate who issued it.
2. A copy of the affidavit must be attached to the warrant and served with it.
3. An officer may execute a search warrant either during the day or at night.

B. Preparing to execute the warrant

Before executing the warrant, the on-duty supervisor shall review the warrant and the affidavit, brief the search team officers on the procedures to be followed. The supervisor shall ensure that the entire warrant process is documented. Written reports shall be supplemented with photographs or videotape, if available and appropriate.

C. Gaining entrance to premises

1. The search team shall first deploy around the premises to be searched, ensuring that all exits are covered. Uniformed officers shall be the most visible members of the search team and shall conduct the entry.

2. In most cases the officer shall do all of the following before entering the premises to be searched:
 - a. He or she must announce his presence as a law-enforcement officer.
 - b. The officer must announce that his purpose is to execute a search warrant.
 - c. The officer must wait a reasonable time either to be admitted or refused admission to the premises.

3. When entrance is refused

If the officer is refused entrance after a reasonable time, he may force his way into the premises using force applicable to the circumstances. "Reasonable time" in this context depends on the circumstances. A refusal may be expressed or implied. A refusal can be implied in two circumstances:

- a. No one has admitted the officer within a time in which it would be reasonable to expect someone to let the officer in if he or she is going to be admitted at all.
- b. The officer waiting to be admitted sees or hears suspicious circumstances, such as flushing toilets or footsteps running away from the door, which indicate that someone might be concealing or destroying evidence or trying to escape.

4. No-knock or exigent entry

In some circumstances a police officer may enter the premises to be searched without announcing his or her presence and purpose before entering. The judicial authority issuing the warrant may add a no-knock entry provision to the warrant. If not, the decision to make a no-knock entry shall be made by the on-scene supervisor based on facts that would lead him or her to believe that an announcement would result in:

- a. Bodily harm either to the officer or to someone within the premises to be searched.
- b. The escape of the person to be searched or arrested.
- c. The destruction of evidence.

5. If circumstances require a no-knock or exigent entry, then the first officer to cross the threshold into the premises shall announce that law-enforcement

officers are executing a warrant. Officers shall also command the occupants to take the appropriate action to ensure their safety. Sample commands:

- a. "Police/sheriff, search warrant, get down."
- b. "Police/sheriff, search warrant, stay where you are."
- c. "Police/sheriff, search warrant, put your hands up."

- 6. In executing any warrants, officers may use whatever force is reasonably necessary under the circumstances to effect a lawful purpose.

D. Conduct of the search

- 1. Once evidence being searched for is located, the search must cease at that point.
- 2. Officers shall not use a search warrant to conduct a fishing expedition, i.e., if the search warrant is for a television, or large item, small places such as jewelry boxes may not be searched.
- 3. An officer may seize **only the property listed in the warrant** with **two exceptions**:
 - a. The other evidence is reasonably related to the offense for which the search warrant was issued.
 - b. It is property which the officer knows or has probable cause to believe is evidence of another crime. (See the discussion of plain-view seizures under GO 2-1.)

E. Searches of persons found on premises

- 1. A person's presence on the premises to be searched with a warrant does not, without more, give rise to probable cause to search that person beyond a frisk for officers' safety.
- 2. A warrant to search the premises for contraband does carry with it the authority to detain the occupants of the premises while a search is being conducted. If the search of the premises gives rise to probable cause to arrest the detainee, he or she may be arrested and his or her person searched incident to arrest.
- 3. A person on the premises may be searched if the officer has probable cause to believe that items listed in the warrant are concealed on the person. Mere presence on premises does not constitute probable cause.

VII. PROCEDURES - Return of the search warrant

A. Per § 19.2-57, after an officer has finished a search, he or she shall perform the following:

1. Note the date of execution on the search warrant.
2. Under oath, the officer must make an inventory of all the property seized.
3. Within three days of the date of the search (excluding Saturdays, Sundays, or legal holidays) file the following in the circuit court clerk's office (of the jurisdiction wherein the search was made):
 - a. The search warrant.
 - b. Either the inventory of articles seized (which must be notarized) or a notation that nothing was seized during the search.
 - c. The affidavit (unless affidavit was made by voice or videotape recording).

B. Responsibility for property seized

1. All property seized must follow a rigorous chain-of-custody procedure. Documentation must appear in all narrative reports pertaining to the chain of custody of any items seized. The department evidence tag shall be used to mark all seizures.
2. Officers shall place evidence in the locker reserved for the purpose.
3. Observe the property and evidence procedures as detailed in GO 2-15.